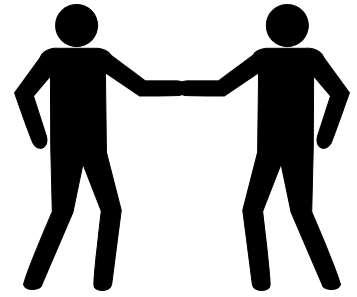


## ROOMMATES

This section has been borrowed from a list of recommendations prepared by the City of Boulder Community Mediation Service. These suggestions are based on past experience and common sense and are not intended to substitute for legal advice.

Many roommates enter into their living-together relationships with high hopes and positive expectations. Especially if roommates are also friends, they may believe that everything will go smoothly and that all they need is "an understanding" between them. However, people change and circumstances change - best friends do not always make the best roommates.



It is wise to treat the mechanics of house sharing as a business relationship in order to protect the personal relationships between roommates.

### FORMING A NEW HOUSEHOLD

Often, the basis of disputes is poor communication or a misunderstanding of mutual expectations between roommates. To minimize misconceptions and false expectations, we recommend:

#### Communication

Potential roommates should thoroughly discuss their needs, expectations and the general ground rules they each wish to establish in a shared household **PRIOR** to signing a lease and moving in together. This applies equally to a situation where a new roommate moves into an established household.

#### Contract

Roommates should draw up and sign a Roommate Agreement which spells out their rights and obligations to each other, and including the following information: (*See page 68 of this Handbook, Appendix H, for a sample Roommate Agreement*)

1. Date of agreement
2. Names of roommates
3. Address of rental property
4. Amount or percentage of rent and utilities to be paid by each roommate
5. Total amount of security deposit paid and portion of that deposit paid by each roommate
6. Agreement that each roommate will pay for damages they cause or damages caused by their guests
7. Agreement by all roommates that, if a roommate moves out prior to the end of the lease term, he or she will continue to pay their share of the rent for the lease term unless the landlord agrees to allow a replacement tenant
8. Agreement about who will be responsible for finding, interviewing and deciding on new roommates

9. Agreement that each roommate will pay a specific share of the cost of any repairs, improvements or other costs incurred in the operation of the household or due under the lease
10. Other agreements the roommates think appropriate
11. Signature of every roommate

The Roommate Agreement is just that: a written confirmation of agreement among the roommates. It is not binding upon the landlord unless the landlord also signs the document. The lease is the agreement between tenants who sign the lease and the landlord. Tenants need to pay particular attention to their joint and several liability to the landlord, as explained below on this page.

When inevitable problems do arise, roommates should talk to each other and try to work them out at the time they occur rather than waiting until those small problems build up into irresolvable resentments.

## **CHANGING ROOMMATES**

One of the most common problems occurs when one roommate in a household wants to move out. When a roommate leaves before the end of a lease term, good communication and great care are needed to minimize confusion and to prevent exposing the remaining roommates to additional financial obligations.

### **Joint and Several Liability**

Each tenant who has signed the lease is responsible to the landlord for the rent for the entire lease term, whether living on the premises or not. If more than one person has signed the lease, each person individually is responsible for paying the rent in full, and also all persons collectively are responsible for paying the rent in full. If one roommate moves out and does not pay their share of rent owed, all other roommates must pay their individual rent portion, plus any amount not paid by the departed roommate. If the rent is not paid to the landlord in full, they will all be subject to eviction for nonpayment of rent. The remaining roommates must then try to collect whatever they can from the departed roommate for rent paid on his/her behalf.

### **Procedure When One Roommate Moves Out**

The following is a list of procedures for departing roommates, which may help prevent problems. If you are a roommate who is planning to move before the end of the lease term, you should:

1. Talk to your roommates about your intention to move.
2. Make sure to understand how the lease might affect your decision to leave:
  - a. Is subletting/assignment prohibited? Even if the lease prohibits subletting, the landlord cannot unreasonably refuse to sublet.
  - b. Is the permission of the landlord required before you can sublet or assign?
  - c. Does the landlord's permission have to be in writing?
  - d. Are there special conditions that must be met before subletting or assigning?
  - e. Does the lease say that only those persons named in the lease can occupy the premises?

3. Discuss with your roommates how to arrange for a replacement roommate:
  - a. What type of person is acceptable to the other roommates (reasonable criteria)?
  - b. Who will arrange and pay for advertising?
  - c. Who will receive calls and show the unit?
  - d. What kind of agreement can you make with your other roommates to continue paying rent until a new roommate is found and moves in?
4. Contact your landlord to find out how the landlord would like to handle:
  - a. Approval of a new tenant
  - b. Old and new tenants' relationship to the lease
  - c. Old and new tenants' security deposits.

**Note:** Even if the lease does not require the landlord's permission to sublet, it is to the tenants' benefit to communicate and work things out with the landlord.

### **Types of Subletting and Assignment Arrangements**

There are many versions of subletting/assignment/replacement. Landlords and tenants may wish to negotiate with each other to determine which version works best in their particular situation. Below are a few options. The landlord is not obligated to accept any of these options but, again, may not **unreasonably** refuse.

**Option A:** The landlord terminates the old lease. A new lease is signed between the landlord and the remaining tenants, and including the new tenant. Once the new lease is signed, the departing tenant has no further liability for rent. The landlord returns the old security deposit, less damages, and collects a new deposit from the remaining tenants and the new tenant. This alternative is probably the cleanest arrangement. However, few landlords do this, as it involves substantial work on the landlord's part.

**Option B:** The landlord amends the existing lease, adding the new tenant's name and removing the departing tenant's name. The departing tenant has no further liability for rent. The new tenant pays the departing tenant an amount of money equal to the departing tenant's security deposit. The new tenant now assumes all liabilities of the departed tenant, **including liability for previous damages**. The landlord will then owe any security deposit refund to the new, rather than the departed, roommate. This transaction should be documented **in writing** in an agreement signed by old roommates, the new roommate, and the landlord.

**Option C:** The departing tenant sublets to the new tenant. The departing tenant remains on the lease and is liable for all lease obligations for the remainder of the lease term. Below are some examples of ways in which this option might work for the involved parties.

1. The new tenant signs a sublease agreement and pays the deposit to the departing tenant, who retains the new tenant's deposit. In this case the landlord retains the original tenant's security deposit. When this option is used, the original tenant remains liable for all rent and damages until the end of the lease term. If the new tenant does not pay rent, the other roommates and the landlord can look to the original tenant for the payment. Due to "joint and several liability," the

landlord can also look to the other remaining tenants for the balance of money owed. At the end of the lease term the landlord returns the deposit, less damages, to the original tenant and the original tenant returns the deposit, less damages, to the new tenant. This may prove to be an unworkable option if the whereabouts of the original tenant are unknown or far away or if the original tenant is not cooperative, making collection of rent or other obligations difficult for the new tenant, the remaining roommates or the landlord.

2. The new tenant pays a deposit to the landlord and the landlord retains the deposit of both the original tenant and the new tenant until the end of the lease term, at which time the deposits are returned through the ordinary procedure.
3. The new tenant pays a new deposit to the landlord and the landlord returns the deposit paid by the original tenant.

**Option D:** A hybrid or combination of the above options and/or other agreements worked out between the parties (e.g., a departing tenant might subsidize a new tenant's rent; a departing tenant might pay a fee to the remaining tenants with the agreement that they will secure a new roommate.)

**REMEMBER:** When you are involved in a "joint and several liability" relationship and money is withheld from your deposit, the landlord does not have to determine who is responsible for damages or expenses. Each time a tenant is replaced, it is in the best interest of everyone to do a new walk-through of the unit to ascertain damages before the new tenant moves in.

It is wise to explore these options with your landlord when signing a lease and to additionally specify in a separate Roommate Agreement exactly which procedure will be used if a roommate moves.

**Note:** In these alternatives, departing tenants may not substitute their security deposit for rent payment, in the absence of an agreement allowing them to do so.

## **MEDIATION**

Mediation is often a good way to resolve roommate disputes if discussions fail. Where there has been a turnover of roommates, it may be difficult to sort out legally who is responsible to whom, for what, if an agreement was not made in advance. Mediation provides an opportunity for old and new roommates to identify issues and discover a solution that works for them. It is important to be sure that all involved parties participate in the mediation process. Reaching agreement may be impossible if individuals integral to the dispute are not available. **The City of Longmont Mediation Services can be reached at 303-651-8444.**